

**REDACTED DECISION – DOCKET NUMBER 11-308 RPD – BY GEORGE V. PIPER
ADMINISTRATIVE LAW JUDGE II – SUBMITTED FOR DECISION ON NOVEMBER
8, 2011 – ISSUED ON MAY 2, 2012**

SYNOPSIS

WEST VIRGINIA OFFICE OF TAX APPEALS -- BURDEN OF PROOF -- In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. § 121-1-63.1 (2003).

PERSONAL INCOME TAX -- WEST VIRGINIA ADJUSTED GROSS INCOME OF RESIDENT INDIVIDUAL -- The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

PERSONAL INCOME TAX – EXCLUSION FOR RETIRED FEDERAL LAW ENFORCEMENT OFFICERS -- A person who proves that he or she worked as a federal law enforcement officer, and did not qualify to receive social security benefits while working in that job, may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

ELIGIBILITY DEFINED OF FEDERAL LAW ENFORCEMENT OFFICER -- The Federal Office of Personnel Management has defined a federal law enforcement officer to mean an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. *See* 5 C.F.R. § 831.902 (2011); *See also* 5 C.F.R. §§ 831.901 and 831.903 (2011).

PERSONAL INCOME TAX – ELIGIBILITY ESTABLISHED OF FEDERAL LAW ENFORCEMENT OFFICER -- Petitioner has established his special retirement eligibility as a federal law enforcement officer in that, as an employee, his job duties are

primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. The federal government has distinguished such law enforcement officers from other civil service employees, including military personnel, in that the federal law enforcement officer's retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees' retirement benefits.

PERSONAL INCOME TAX – QUALIFICATIONS FOR EXCLUSION OF FEDERAL RETIREMENT INCOME -- To qualify for special retirement eligibility as a federal law enforcement, Petitioner, as a duly-retired officer of the United States Secret Service, submitted evidence showing that his duties are commensurate with that as a law enforcement officer, that his retirement system is separate and apart from the social security retirement program and that Petitioner, having not paid social security taxes while employed, cannot receive social security benefits.

PERSONAL INCOME TAX -- BURDEN OF PROOF MET -- Petitioner has carried the burden of proof with respect to the issue of whether he is entitled to the same treatment as the taxpayer in the *Dodson* ruling discussed above because Petitioner does not qualify to receive social security benefits as a federal law enforcement officer.

FINAL DECISION

On April 13, 2011, Petitioner's, filed a claim for refund of personal income tax for tax years 2007, 2008, 2009 and 2010, in the amount of \$_____. On August 15, 2011, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office (hereafter Respondent) denied the refund claim as not being supported by statutory law. Thereafter, by mail postmarked September 2, 2011, Petitioners timely filed with this Tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code Ann. §§ 11-10A-8(2) and 11-10A-9(a)-(b) (West 2010).

FINDINGS OF FACT

1. Petitioner served in the Uniform Division of the United States Secret Service for twenty years, retiring in 1989.

2. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer; in that he was qualified to carry weapons, had the power to make arrests with or without warrants, and was responsible for the investigation and arrests of persons violating the D.C. Criminal Code and the United States Criminal Code.

3. Petitioner, while employed by the United States Secret Service, did not pay social security taxes, and therefore, cannot receive social security benefits pursuant to his federal employment.

4. Respondent is in agreement that Petitioners' refund claims total \$_____ for tax years 2007, 2008, 2009 and 2010.

DISCUSSION

The sole issue is whether Petitioner, a retired uniformed officer with the United States Secret Service, who could not collect social security benefits, may totally exclude his retirement pension for West Virginia personal income tax purposes, pursuant to the holding in *Dodson v. Palmer*, Civil Action No. 00-C-AP (Monongalia County, WV 2000).

The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

According to the ruling of the Circuit Court of Monongalia County, West Virginia, in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000), a person who proves that he or she worked as a federal “law enforcement officer,” and did not qualify to receive social security benefits while working in that job may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax.

For purposes of establishing special retirement eligibility, the Federal Office of Personnel Management has defined a federal “law enforcement officer” to mean, “an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. *See* 5 C.F.R. § 831.902 (2011); *See also* 5 C.F.R. §§ 831.901 and 831.903(2011). The federal government has also distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that the federal law enforcement officers’ retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

The documents submitted by Petitioners, in this matter, showed that Petitioner was a duly-retired officer of the United States Secret Service with twenty years of service, and that his duties were commensurate with his job as a law enforcement officer.

The retirement system into which Petitioner made contributions is separate and apart from the social security retirement insurance program and Petitioner did not pay social security taxes while employed and, therefore, cannot receive social security benefits.

Petitioner, as a qualified law enforcement officer, is therefore entitled to exclude his law enforcement retirement benefits from West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000).

CONCLUSIONS OF LAW

Based upon all of the above, it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. § 121-1-63.1 (2003).

2. The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

3. A person who proves that he or she worked as a federal law enforcement officer, and did not qualify to receive social security benefits while working in that job may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

4. The Federal Office of Personnel Management has defined a federal law enforcement officer to mean an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a

supervisory or administrative position. *See* 5 C.F.R. § 831.902 (2011); *See also* 5 C.F.R. §§ 831.901 and 831.903 (2011).

5. Petitioner has established his special retirement eligibility as a federal law enforcement officer in that, as an employee, his job duties were primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. *See* 5 C.F.R. § 831.902 (2011); *See also* 5 C.F.R. §§ 831.901 and 831.903(2011).

6. The Petitioner has submitted evidence sufficient to show that his duties are commensurate with that as a law enforcement officer, that his retirement system is separate and apart from the social security retirement program, and that Petitioner, having not paid social security taxes while employed, cannot receive social security benefits.

7. Petitioner has carried the burden of proof with respect to the issue of whether he is entitled to the same treatment as the taxpayer in *Dodson* because Petitioner performed duties commensurate with a job as a law enforcement officer and does not qualify to receive social security benefits.

DISPOSITION

WHEREFORE, it is the Final Decision of the West Virginia Office of Tax Appeals that Petitioners' petition for refund of West Virginia personal income tax for tax years 2007, 2008, 2009 and 2010 is **GRANTED** in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS